

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B04

PLR-130716-10

Date:

December 17, 2010

Taxpayer: =

Individual A =

Country A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Year 1 =

Firm A =

Firm B =

Dear :

This is in response to a request dated July 19, 2010 filed by Taxpayer for a ruling granting an extension of time for making the election under section 831(b) of the Internal Revenue Code. The request is made in accordance with and seeks relief pursuant to section 301.9100-3 of the Procedure and Administration Regulations.

### FACTS

On Date 1, Taxpayer was formed under the laws of Country A as a property and casualty insurance company. Taxpayer represents that it is subject to tax under section 831, and that its "business plan" called for it to elect to be taxed under section 831(b). To implement this plan, on Date 2, Taxpayer elected to be taxed as a U.S. corporation under section 953(d). This election was made by Firm A which provided legal advice regarding the formation of Taxpayer.

On Date 3, Firm A sent by e-mail and regular mail a memorandum to Individual A, an officer of Taxpayer, concerning tax and financial reporting requirements. The e-mailed copy of the memorandum was "undeliverable" and Individual A was not aware of the copy sent by regular mail until some time after Date 4, the due date (without extensions) for Taxpayer's Year 1 return. On Date 5, Individual A contacted Firm B to inform them that Taxpayer would like them to prepare Taxpayer's Year 1 tax return. A member of Firm B informed Individual A that due date was Date 4. After discussions on Date 6, Firm B was directed to prepare this request for relief under section 301.9100-3 to make the election to be taxed under section 831(b). Firm B prepared a Year 1 Form 1120-PC (U.S. Property and Casualty Insurance Company Income Tax Return), which was filed on Date 7.

### LAW AND ANALYSIS

Insurance companies other than life insurance companies are taxable under section 831(b) on their taxable income. However certain insurance companies can elect to pay an alternative tax provided in section 831(b)(2)(A) on only their taxable income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b).

Pursuant to section 310.9100-8(a)(2)(i), this election must be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) of the return for the first taxable year for which the election is effective.

Section 301.9100-8(a)(3) provides that this election must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective. If such tax return is filed prior to the making of the election, the statement

must be attached to an amended tax return of the first taxable year for which the election is to be effective.

Under section 301.9100-1(c), the Commissioner may grant reasonable extension of time pursuant to sections 301.9100-2 and 301.9100-3 to make a regulatory election (but no more than 6 months except in the case when the taxpayer is abroad), under all subtitles of the Code except subtitles E, G, H and I.

Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice or announcement.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extension) must be made pursuant to section 301.9100-3. Relief will be granted under section 301.9100-3 when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not be prejudice the interests of the government.

A taxpayer is deemed to have acted reasonably and in good faith under section 301.9100-3(b)(1) if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the advice of the Internal Revenue Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer and the tax professional failed to make or advise the taxpayer to make the election.

A taxpayer is deemed not to have acted reasonably or in good faith under section 301.9100-3(b)(3) if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of section 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested, (ii) was informed in all material respects of the required election and related consequences but chose not to file the election, or (iii) uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that makes the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Section 301.9100(c)(1) provides, in part, that the interest of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money) and are ordinarily prejudiced if the taxable year in which the regulatory election had it been timely made are closed, by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

Based solely on the facts submitted and the representations made, we conclude that the requirements of sections 301.9100-1 and 302.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time until 60 days following the date of this letter to make the election in the manner prescribed by section 301.9100-8(a)(3) to be subject to the alternative tax provided in section 831(b)(2)(A) for Year 1.

Notwithstanding that an extension of time is granted by this letter, any additions to tax, penalties and interest that would otherwise be applicable continue to apply with respect to the tax return(s) for Year 1.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed herein, including but not limited to whether Taxpayer qualified under part I or part II of subchapter L for Year 1 if it were a domestic corporation.

Pursuant to section 7.05 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1, 29, a copy of this ruling letter should be attached with Taxpayer's federal income tax return for Year 1.

This ruling is directed only to the taxpayer who requested it. Section 6110 (k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representative.

Sincerely,

/S/

JOHN E. GLOVER  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Financial Institutions and Products)